Ontario Human Rights Commission

affirmation

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New Human Rights Code Introduced in Legislature

On November 25, 1980, the Ontario Minister of Labour, the Honourable Robert G. Elgie, M.D., introduced the long awaited new code, on behalf of the government. At press time the bill is under consideration by committee, and it is therefore not yet possible to discuss it as a finished document.

In which way will the new code differ from existing legislation? Explanatory notes prefacing the bill set them forth as follows:

1. *The circumstances under which discrimination is prohibited are extended to include:*

   a) discrimination in the equal enjoyment of goods, services and facilities generally and not limited to those available in a place to which the public is customarily admitted;
   b) discrimination in contracts;
   c) discrimination because of a person's association with others;
   d) discrimination on a ground that has the result of discrimination because of a prohibited ground;
   e) harassment of an occupant of accommodation by the landlord or another occupant because of a prohibited ground;
   f) harassment of an employee by the employer or another employee because of a prohibited ground of discrimination;
   g) sexual solicitation, reprisal or threat of reprisal by a person in a position of authority.

2. *The prohibited grounds of discrimination are extended to include:*
   a) handicap;
   b) marital status with certain exceptions in the case of accommodation;
   c) record of offences in the case of employment;
   d) age between 18 and 65 years;
   e) family with certain exceptions in the case of accommodation;
   f) receipt of public assistance in the case of accommodation.

3. *Sanctions against discrimination in employment by contractors under Government contracts.*

4. *Protection in employment is extended to domestic workers.*

5. *Landlords and employers may be made responsible to prevent harassment of tenants and employees.*

6. *The Bill would bind the Crown and have primacy over other legislation.*

7. *The Commission is empowered to recommend the introduction and implementation of affirmative action programs.*

8. *A Race Relations Division is established with its own Commissioner.*

9. *Boards of inquiry are required to issue decisions within 30 days of the conclusion of their hearings.*

10. *Boards of inquiry are empowered to make orders respecting access for the handicapped after a finding of discrimination has been made.*

11. *Boards of inquiry are empowered to award damages for mental anguish.* ■

As we go to press provincial elections have been called and all outstanding legislation must await re-introduction in the new legislature.

It is hoped that a new human rights bill will be presented at an early time.

Some provisions of the revised human rights code

Last November, the Ontario government introduced into the Legislature Bill 209, a revised Ontario Human Rights Code. The bill has received second reading and will proceed to the Standing Committee on Social Development for discussion at the end of February. Here are some highlights of the new bill which distinguish it from the existing human rights code.

Equal treatment

Equal treatment in the enjoyment of services, goods and facilities (sec. 1). To allow for wider application, 'services' is unqualified except that taxes and fees authorized by law are specifically excluded (sec.9(j)) from the meaning of the term.

Equal treatment in the occupancy of accommodation (sec.2). Protection is extended to handicapped persons and to those in receipt of public assistance. Families, that is, persons in a parent and child relationship (sec.9(f)) are also protected except in the case of multiple dwelling buildings with a common entrance that are restricted, in whole or in part, to adults only (sec.19(4)). This would include apartment complexes but not town housing.

Sexual harassment

Persistent sexual solicitation, and reprisals or threats of reprisal for refusing sexual advances, are prohibited when they stem from a person 'in a position of authority who knows or ought reasonably to know that it is unwelcome' (sec.6). 'Persistent' means the conduct has to occur more than once. Harassment because of any prohibited ground, including race and sex, is prohibited in the accommodation and employment contexts (secs. 2(2) and 4(2)).

Constructive discrimination, that is, where a requirement is imposed which, by its very nature, would automatically disqualify a group of persons against whom it is prohibited to discriminate, is prohibited except where the requirement is a reasonable and genuine one (sec.10). A good example might be a rule that taxi drivers must not wear beards. Such a rule would disqualify all Sikhs from becoming taxi drivers and would result in discrimination because of creed.

Protection of the handicapped

Discrimination against handicapped persons is prohibited in all areas of the code provided that the handicap does not prevent the individual from performing the essential functions of the particular activity in question (sec.16). Past, present and perceived handicaps are included and 'handicap' is defined to mean physical disability, mental retardation, learning disability and mental illness (sec.9(b)). Application forms must not require information about a handicap or any other prohibited ground of discrimination (sec.21(1)).

Affirmative action

Positive affirmative action is permitted and the Ontario Human Rights Commission may, upon its own initiative or upon complaint, investigate a company's affirmative action plans to ensure that they conform to the code (sec.14). As well, it is a function of the commission to recommend the introduction of affirmative action programs (sec.25(c)).

A requirement of Canadian citizenship does not violate the equal treatment provisions of the code if it is authorized by law or is adopted to encourage Canadians to participate in cultural, educational, trade union or athletic activities (sec.15).

The rights of the Roman Catholic Church with regard to its separate school system are expressly upheld in section 17.

Religious, philanthropic, educational, fraternal or social organizations which serve their particular constituencies maintain their traditional rights to exclusiveness (sec.18(2)).

Discrimination in contracting is prohibited (sec.3). As well, contracts with the Crown may be cancelled or the contractor refused further contracts if he is found to have breached the code (sec.22).

Commission procedures

There are a number of structural changes to the Ontario Human Rights Commission including the following:

1. At least three members of the commission will be designated as a race relations division of the commission, one of whom shall be appointed commissioner for race relations (sec.24).

2. It is a function of the commission to review legislation and policies or programs established under them and make recommendations on those that are inconsistent with the intent of the code (sec.25(e)).

3. The commission is to investigate causes of tension or conflict and is to work with other levels of government and private groups towards the easing and elimination of conflict (sec.25(f) (g) (h)).

4. The commission may decide not to deal with a complaint if it is trivial, frivolous, vexatious or made in bad faith (sect.30(1) (b)).

5. If the commission decides not to deal with a complaint or decides not to request the minister to appoint a board of inquiry, the complainant may request reconsideration in writing within 30 days (secs. 31 and 34).

6. The commission can *request* the minister to appoint a board of inquiry (sec.35) rather than just *recommend*, as at present.

7. Upon a finding of discrimination, a board of inquiry may order the respondent to do whatever is necessary to comply with the code, including instituting programs of affirmative action. It may award damages of up to $5,000 for mental anguish and may make orders to prevent harassment. Where a finding of discrimination on the ground of handicap is made, it may also make access orders with respect to premises, equipment and job restructuring (sec.38).

8. With the consent of the attorney general, a person may be prosecuted and liable to a fine of up to $25,000 for breach of the code (sec.41).

9. The commission will report to the minister, but not specifically the minister of labour, as at present (sec.43(a)).

The act binds the Crown

Finally, the 'Act binds the Crown', which is to say that all government branches are subject to the provisions of the code. Moreoever, where a provision of another act conflicts with the human rights code, the code prevails over the other act, unless the act specifically provides that it is to apply notwithstanding the code. The primacy provision will apply to future legislation when the code comes into force and to existing legislation after two years (sec.44). ■

From Dr. Elgie's statement

In introducing the proposed new Ontario Human Rights Code, the Honourable Robert G. Elgie, M.D., Ontario minister of labour, said in part:

Mr. Speaker,

Later this afternoon I shall be introducing a bill entitled "An Act to revise and extend Protection of Human Rights in Ontario". It is, in substance and effect, an entirely new human rights code and represents the culmination of the work begun some four and one-half years ago by the Human Rights Code Review Committee, under the chairmanship of Thomas H. B. Symons.

While I do not wish to over-dramatize the situation, I believe that this is an especially important occasion, not only for those who have worked so tirelessly for human rights reform in Ontario, both within government and elsewhere, but also for the people of the province as a whole, who, because of their tolerance, decency and respect for others, contribute so significantly to the quality of life in Ontario. . .

Ontario's Leadership

Ontario was the first jurisdiction in Canada to enact a comprehensive code on human rights some 18 years ago. Important revisions have been made from time to time but, until now, there has not been a comprehensive review of the code. In its report *Life Together*, delivered to my predecessor in August of 1977, the Human Rights Code Review Committee urged that such a comprehensive revision be undertaken. The committee's specific recommendations, which resulted from meetings and deliberations with groups and individuals across the province, from all walks of life, covered a broad range of issues. . .

The minister outlined the major provisions of the new code and then continued:

I believe that the bill addresses the major human rights issues fairly and compassionately. It does not represent the end of reform, but rather a new beginning. It will be apparent that some substantive issues discussed in *Life Together* have not been dealt with. One that has given me and my colleagues particular difficulty is the upper limit of the definition of age.

Questions of age. . .

Members will recall that the Honourable Member from York West, Mr. Leluk, recently introduced a Private Member's Bill dealing with this issue and the government appreciates that there are persuasive arguments for raising the age limit to 70 or beyond, and, in fact, is very sympathetic to the concept of extending the age of mandatory retirement. We have great sympathy for the views of those who contend that healthy and able-bodied employees should not be forced into retirement against their wishes simply because a particular employer may have rigid, inflexible and universally applicable rules for the retirement of all employees.

On the other hand, there are arguments against appearing to encourage personnel policies and practices which would delay the benefits, financial and psychological, of retirement for our older workers. In addition, there are other complex labour market ramifications of extending the definition of age under the code, and the effect that might have on younger members of the labour force, where rates of unemployment are, chronically, the highest.

. . .and pensions

The findings and recommendations of the Royal Commission on Pensions, which, I believe, will soon deliver its report to the government, will, I hope, shed light on the effect of a change in the age at which employees may be compulsorily retired. I think it would be unwise to propose any change on the eve of the royal commission's report on this important topic, but the government wishes to make it very clear at this time that pending further discussions of the issue before the standing committee, where it should be given first priority, it is prepared to introduce appropriate amendments. . .

A matter of conscience

In the evolving field of human rights there can never be an end to reform. I have characterized this as a new beginning, in both substantive and symbolic terms. I have described the substance of the proposals. The symbolic importance of the revisions cannot be over-emphasized. I hope that the people of Ontario will recognize that the new code represents this government's re-dedication to the elimination of the corrosive effects of discrimination in our society. Ultimately, of course, the success of laws, especially in this sensitive area, depends on the goodwill, tolerance and maturity of our people. While human rights laws are essential, we are dealing, in the profoundest sense, with matters of conscience and of the heart, some of which will always remain beyond the reach of any man-made law. . . .

The North York experiment

Courtesy of the City of North York Public Information Office

North York Mayor Mel Lastman (left), Mr. Al Mercury (centre) and Father Massey Lombardi (right) co-chairmen of the Committee on Community, Race and Ethnic Relations with the framed proclamation.

In September, 1979, on the initiative of the Ontario Human Rights Commission, Mayor Mel Lastman of North York proceeded to establish a Committee on Community, Race and Ethnic Relations. The city of North York, fourth largest in Canada, has a population of 563,000 whose composition is as varied as any that may be found in the province or in the country at large. Because of this, North York was seen as a potential pace-setter for intensified efforts in the field of human relations. Mr. Al Mercury, executive director of Black Coalition and Father Massey Lombardi, director of the office of Social Action, agreed to act as co-chairmen of the committee, which is composed of representatives from many areas of public life. The Ontario Human Rights Commission initially staffed the North York committee, but City Council has now allocated funds for the hiring of a full-time member.

In the summer of 1980, North York City Council adopted the following policy statement submitted by the committee:

Policy statement

The City of North York considers the presence of people from a wide range of racial, ethnic, cultural and religious backgrounds within the city to be a reflection of the Canadian ideal and a source of enrichment and strength.

The City of North York recognizes that its residents are legally entitled to full and equal access to, and participation in, all its social, cultural, economic and political affairs.

The City of North York expects its staff to ensure that these objectives are met in the performance of their duties, and it urges its associated boards and commissions to issue similar instructions.

The policy statement is now the official position of the City. It entrenches a code of behaviour on the part of the municipal government and its staff with respect to promoting harmonious race relations in the city. This landmark step has been made into a proclamation and is currently on display in the civic centre lobby. The policy statement has also been passed on to the North York Board of Education, the library board and the historical board, in addition to being distributed to the various department heads in the municipality.

Initiatives

Since its inception, the committee has undertaken a number of initiatives.

1) On the mayor's suggestion, it is considering the implementation of multiple job listings. The intent behind the concept is to ensure that the City's recruiting process is attracting applications from all residents in its boundaries and not just a select few.

2) In cooperation with the Department of Parks and Recreation, the sub-committee has been meeting with various community groups and agencies in Flemingdon Park, in addition to other areas, around the issue of the effective use of recreational facilities by all residents. Of concern is the apparent low use of facilities by the visible minority component of the Park's residents. The sub-committee is currently working on a needs assessment in the area in order to harmonise equal opportunity service delivery by the Department of Parks and Recreation Services with their programs.

3) Through the committee, more effective linkages between the Jane-Finch community and the local board of education have been established. It is the hope of the committee that other minority community-institutional links can be established to improve communication between groups and institutions in this area.

4) Supplementing the work of the 31 Division Pilot Committee on Police-Minority Relations, the Committee on Community, Race and Ethnic Relations acted as a bridge between black youths and the police when difficulties developed between them. As a result of these discussions, a further meeting to iron out concerns was orchestrated by the committee. Senior officials of both the police commission and the police department met with black youth workers and local black youth representatives to express mutual concerns about police-minority relations and the prevention of further ruptures in these relations.

5) Committee members have been meeting with merchants and business enterprises in the Jane-Finch area in an effort to increase their awareness of the high unemployment among black youth in the neighbourhood and to impress upon them the necessity to hire locally where feasible in an effort to improve this situation.

Future initiatives include: an outreach program in high risk neighbourhoods where racial tensions may develop, unemployment and its negative impact on visible minority youth, equal employment opportunities at the municipal level; and outreach efforts to various institutions including civic, business and labour associations.

Courtesy of the City of North York Public Information Office

Mayor Mel Lastman discusses the City's race relations initiative with Father Massey Lombardi and Mr. Al Mercury.

Urban Alliance presents brief

In November, 1980, just before the governement introduced Bill 209 to amend the Ontario Human Rights Code, the Urban Alliance for Race Relations issued a 33-page brief entitled *A Statement of Concerns and Recommendations Regarding Human Rights in Ontario.* Delivered and interpreted by President Carol Tator, it presented 24 recommendations. Of these, six dealt with police procedures, four with education, the remainder with proposed amendments to the Ontario Human Rights Code.

The new bill, as proposed, covers a number of the suggestions presented in the brief, such as an affirmative action and contract compliance. It does not, however, provide for storefront operations of the commission (this being an administrative procedure which the commission will seriously consider). The new bill would make the commission more independent, though not as independent as the brief recommends. Finally, the new bill goes well beyond the brief in that it extends the protected age range down to 18 years, specifically permits complaints against the Crown, and most important, provides for the paramountcy of the code over all other legislation.

It is precisely through the concern of community organizations like the Urban Alliance for Race Relations and the efforts of their advocates inside and outside government that the cause of human rights is advanced.

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Editorials

Affirmative action

'Affirmative action' - the term has set off strong reactions for and against it. Just what does affirmative action mean and how does it work in Ontario?

Everyone agrees that in our social structure certain historic inequities stubbornly persist. Ordinary legislation and social evolution have been unable to correct them substantially. Minorities and women remain shut off from the main stream of opportunity. Example: Blacks are rarely hired as models or actors for the purpose of TV advertising. Since they cannot get jobs, they cease applying; since they do not apply, they do not get jobs. It is a vicious cycle that needs to be broken.

That is where affirmative action comes in. Section 6a of the current Ontario Human Rights Code and sections 14 and 25(c) of the proposed code give the commission leave to approve special programs aimed at increasing the employment of historically disadvantaged groups.

By way of illustration: Last year, the commission received a communication from the City of Ottawa indicating that it was

'preparing to recommend an affirmative action program for women within its labour force, which would have the effect of hiring a work unit of four to six women to perform labouring duties which have traditionally been performed by men.'

Ordinarily, of course, advertising that specifies a preference for women would contravene the code. However, would the commission approve a special employment program and permit this special one-time procedure? The jobs paid good wages and involved such work as asphalt repairs, sewer maintenance and the like, and the operation of heavy equipment.

The commission approved Ottawa's special employment program. Under Bill 209 (the new code), this and similar affirmative actions are strongly encouraged.* ■

*For another example of affirmative action, see page 4.

Built-in limitations

In any case that comes before the Ontario Human Rights Commission, both complainant and respondent will demand that the human rights officer investigate and assess the case with proper care. No hasty conclusions, no slipshod reporting must mar the commission's work. Though it is an administrative, not a judicial, body, its functions must, at all times, be discharged with complete fairness.

Yet, time and again the commission is criticized for its slowness. Critics complain that some cases take up to six months, and sometimes even longer, to reach the decision stage. The delays are due to three major causes: the staff is overburdened by the increasing case-load; cases are becoming more complex and the very thoroughness of an investigation, which both the commission and the parties concerned require, makes a quick disposition unfeasible.

Thus, a complaint was laid in early March, 1980 by a woman who alleged that she lost her job because she refused sexual advances by her supervisor. The latter denied the allegation. The human rights officer then interviewed 38 women in the workplace in order to ascertain whether some pattern of sexual harassment was discernible, if not through direct, then perhaps through circumstancial, evidence. It was not, and the complaint was subsequently dismissed by the commission at its November meeting.

Did the investigation go to excessive lengths? Perhaps. Would a sampling of witnesses have sufficed? Suppose that among those who would have remained unquestioned there were two or three who had had encounters with the supervisor similar to those of the complainant. Would justice have been served? Would the complainant feel that the case had been adequately investigated?

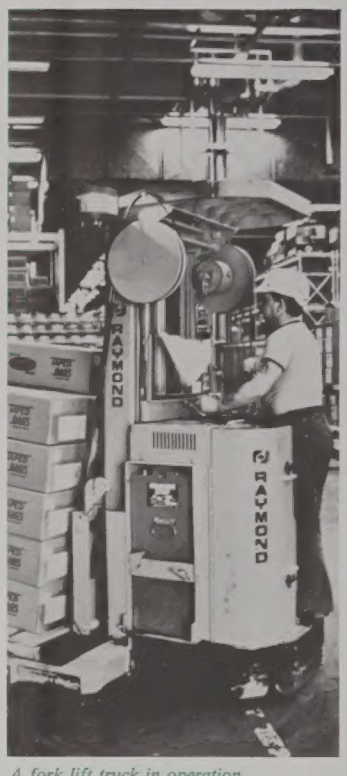
There are obviously built-in dilemmas in the administration of the commission. Justice delayed is justice denied, but so is an incomplete investigation. ■

With gratitude

Quite naturally, a large portion of this issue of *Affirmation* is devoted to Bill 209, the proposed new Ontario Human Rights Code. It is proper that we begin our consideration of its scope, as Dr. Elgie did when he introduced the bill, with an acknowledgement to the men and women who framed *Life Together*. That report, issued in 1977, became the starting point of the construction of the new bill, and we join in expressing our profound gratitude to Dr. Thomas H. B. Symons, then chairman of the commission, Dr. N. Bruce McLeod, chairman of the code review committee, and all those who assisted them in advancing the cause of human rights by their imaginative labours.

Not all their proposals are likely to be enacted, but we anticipate that enough of them will become law to make the framers feel that their efforts were rewarded. ■

Case report



A fork lift truck in operation.

Every month the Ontario Human Rights Commission staff prepares a conciliation report. Cases are listed by code numbers to protect all parties. The officer submits a summary which, however, does not reveal his or her painstaking labours to affect the settlement. The following is a recent example:

The complainant, a female, commenced employment with the respondent company in 1969 and in 1977 began work as a Grade 4 warehouse operator. In 1978, she and two other females in the department were advised that their Grade 4 positions would be integrated into Grade 5 positions. They were given the options of either taking Grade 4 positions elsewhere in the plant, or applying for the Grade 5 positions, and, if unsuccessful, taking whatever job was available.

The complainant applied for, and received, the higher classification which entailed heavy lifting and driving a fork lift truck. However, she was required to obtain a doctor's certificate stating that she was capable of fulfilling the duties, and was subjected to undue pressure and harassment by management in numerous meetings. She was never instructed how to handle her duties properly.

In 1979 she was given the choice between being demoted with a drop in pay and being laid off. She accepted the demotion.

The investigation found that the complainant received differential treatment and that she was given the hardest tasks, without assistance, in order to prove her incapable of completing the job requirements.

The respondent agreed, after a year of negotiations and a legal opinion, to pay financial compensation of $3,222.05, representing lost wages, interest and $2,000.00 general damages. The company also agreed, in a letter of assurance to the commission, to remove an incident report from the complainant's file and to post code cards. ■

Our readers write

A member of the provincial Parliament inquired why we do not publish the names of parties who have reached a settlement. The Ontario Human Rights Commission provides the following answer:

Section 14.-(1) requires the commission to 'inquire into the complaint and endeavour to effect a settlement of the matter complained of.' Failing satisfactory settlement, the commission makes a recommendation to the minister of labour on whether or not a board of inquiry should be appointed.

In 1979-80, 73 per cent of all cases were resolved in conciliation, which is a process undertaken without prejudice to either party to the complaint. It is a process of negotiation rather than adjudication because the code provides that the only body that can find that a violation has taken place is the board of inquiry.

The agreement reached in conciliation is a private agreement that is analogous to an out-of-court settlement in a civil suit. Because it is a private agreement without any findings as to guilt or innocence, it would be unfair to both parties to publicize the matter using such specifics as the amount of monetary compensation and the names of complainant and respondent, because to do so may create an erroneous impression that blame has been attached.

The advantage of the private nature of conciliation is that the prospect of avoiding public exposure is often a strong inducement upon both complainant and respondent to reach a settlement. Some strong advocates of human and civil rights have stated that the avoidance of the prospect of public exposure following an allegation of discrimination is a powerful tool in human rights work.

The commission is aware of other advantages to be gained from conciliation. It has found that where no evidence of discrimination has been substantiated, but nonetheless a genuine misunderstanding between the parties has occurred, the conciliation process provides an opportunity to clarify the misunderstanding without stigma to either party.

The commission does, however, attempt to make the public aware of case settlements as much as possible through such vehicles as *Affirmation,* its annual report and reports of boards of inquiry.

Another reader, much impressed with *Affirmation,* has ordered 200 copies to be distributed to all his employees.

Other employers, please note! ■

Stereotyping Hurts all Parties

A widow, Mrs. B, owned a house in Northern Ontario. For 34 years she had been renting her property almost exclusively to native Indian tenants. Mrs. B. had shown no evidence of a general pattern of discrimination against native Indians...until 1977.

When she received a complaint from a neighbour regarding her property and the tenants, as well as a complaint from the building and health inspectors, she visited the house. It was immediately clear that the tenants had vacated the premises without notice and with the rent two months in arrears. The house was left in an appalling condition. She also discovered that the family had deceived her. Instead of three children as she had been advised, there were five. The house was not big enough to accommodate so many people. There was no doubt that these tenants had behaved in a distasteful and inconsiderate way.

Unwarranted conclusion

However, despite her past satisfactory experiences with native Indians, Mrs. B. came to the unfortunate conclusion that her problems were not with the particular tenants who had rented the house, but with native Indians generally.

Four months later, after some repairs had been done, the contractor rented out the house on behalf of Mrs. B. Without telling her, he let the premises to a family of native Indians - Mr. and Mrs. J. and their two-year old boy. All the evidence indicates that they were the complete opposite of the previous tenants. The rent was paid on time, the place was kept clean and neat, and the neighbours had no cause for complaint. The Js and their son appeared to be happy in their new home and Mr. J had regular employment. The evidence suggests, in other words, that they were fine people to have as tenants.

Mrs. B. met them for the first time in the spring of 1978. She was alarmed that the house had been rented to native Indians. When she returned in the evening and found they had visiting relatives, she made remarks to the effect that, "when one Indian moves in the whole tribe moves in." She stated that unless the garbage in the backyard was cleaned up they would receive notice to move out. However, the garbage was left by the previous tenants; frozen to the ground, it could not be moved until spring. The Js, even though they really weren't under obligation to do so, removed the garbage in April. Nonetheless, on April 20th, Mrs. B issued a notice to vacate the property.

Bitter consequences. . .

The Js were much hurt and thereafter had difficulty finding a place to rent. Mr. J was working on a night shift and needed his sleep throughout the day; Mrs. J was pregnant with their second child. They were forced to move four times from one relative's residence to another in the five months it took them to find another home after eviction from Mrs. B's property. Later, a board of inquiry found Mrs. B had violated the Ontario Human Rights Code. The board ruled that the Js should receive a letter of apology from Mrs. B as well as an offer of the first available accommodation in any premises which she was offering for rent. Mrs. B's rental activities would also be monitored for a period of two years by the Ontario Human Rights Commission.

. . .for everyone

Further, Mrs. B was ordered to pay $2,000.00 to the Js for the humiliation, frustration and psychological anguish they suffered, though, of course, no amount of remuneration to the Js will compensate for the hurt they and their little boy have felt.

But Mrs. B, too, suffered. Not only did she have to pay damages and, in addition, lose good tenants, but she sustained a blow to her self-image as a law abiding citizen. Stereotyping hurts all parties. ■

Wikwemikong Indian Reserve and The O.P.P.

The Wikwemikong Indian Reserve, which is located on Manitoulin Island, was in the past policed by the Ontario Provincial Police. Several years ago, the band council entered into an agreement with the Ontario Provincial Police to initiate a native policing service on the Reserve. Special native constables were hired and a Band Council Police Advisory Committee was established.

However, over the years certain problems developed between the OPP detachment and the Wikwemikong Reserve. Specifically, concerns were raised that certain OPP Officers were treating native people in a discriminatory manner. Allegations were also made that the native constable program was not as successful as it could be because the OPP detachment did not delegate to the native constables sufficient powers and responsibilities. This in turn led to conflicts between the OPP constables and the special native officers.

In 1978, the band council had brought these concerns to the attention of the Ontario Human Rights Commission and as a result the commission convened a meeting of representatives of the OPP, the band council, and the native constables in an effort to deal with the concerns that had been raised. As a result, undertakings were given to improve the situation.

However, the problems continued and the band council again approached the Ontario Human Rights Commission for further assistance in February 1980. The commission met with the district superintendent of the OPP, in an effort to bring about closer communication between the OPP detachment, the native special constables, and the reserve. In addition, the commission brought the matter to the attention of the Special Services Division of the Ontario Provincial Police, responsible for Indian and municipal policing services.

The OPP undertook to review the disciplinary procedures available, when allegations about the harassment were raised by native people, and also to review the relationship between the OPP detachment and the special native constables. As a result of these reviews, tension between the reserve and the OPP was significantly reduced. Recent checks with the reserve indicate that progress has been made in the implementation of the understanding. ■

Special employment programs

The existing Ontario Human Rights Code prohibits an employer from discriminating on the grounds of race, creed, colour, age, sex, marital status, nationality or place of origin. However, provision is made for the special employment programs to rectify historic inequalities. An employer may apply in writing to the commission for approval of a program designed to increase the employment opportunities of a disadvantaged group. The following is an example. (see also Editorials, page 3).

The Northern Women's Credit Union Limited developed a special training program in response to a Canadian Civil Liberties Association survey that revealed that out of 29 banks employing 530 persons in Northern Ontario, only two native people were employed.

The purpose of the program is to provide native women with adequate skills, through academic training and field placements, to ensure that they find and keep employment in banks, credit unions and the financial departments of business and government. The program received funding through Employment and Immigration Canada, to offer a ten-month training program in general office procedures, basic bookkeeping, teller training and life skills. It is expected that the program will be offered for at least a three-year period. There will be six vacancies during the first year. Trainees are paid a wage for their participation. Entrance to the program is limited primarily to native women. If a vacancy cannot be filled by a native woman, then single women who are their family's sole support or mature women re-entering the labour force will be considered.

The commission ruled that the training program is a special employment program as defined under Section 6 (a) of the code because it had been designed to increase the employment of a class of persons that had experienced discrimination in the past. ■

A federal or provincial affair? Where would you go?

We have a federally appointed Canadian Human Rights Commission and ten provincial commissions. Most cases belong to the latters' jurisdictions — but how would one know the difference? Try the following quiz and see how you come out.

A hint: jurisdiction depends on the status of the respondent.

1. A woman with a part-time job applies to a bank for a $3,000 loan. She is refused the loan and feels that she was refused because she is a single woman. Would she complain to the Canadian Human Rights Commission or the provincial commission?
2. A Hare Krishna family wants to camp out in a national camping park and is refused. Would the family go to the federal or provincial commission?
3. You are Japanese and apply to a national airline company to be a stewardess. You are turned down and you believe it is because you are Japanese. Would you turn to the federal or provincial commission?
4. A Post Office in a small town in northern Ontario states that only men will be considered for employment as mailmen. This is a provincial matter. True or false?
5. A railway company union forbids membership to native Indians. Provincial or federal?
6. The telephone company claims that it cannot hire a man in a wheelchair to be a service representative because the wheelchair is too difficult to manoeuver on crowded elevators at lunch and break times. Federal or provincial?
7. A man and woman must be paid the same amount of money if they are doing work of equal value. Federal or provincial?
8. A restaurant chain on the highway from Quebec City to Windsor has posted a sign in the window which says "Help needed. No one over 35 need apply." Provincial or federal?

For answers, see adjoining column.

1. She would complain to the federal commission because banks fall under the federal jurisdiction. She cannot be refused credit on the ground of her marital status.
2. The complaint would be lodged with the Canadian commission because the camping grounds were in a national park. The Canadian Human Rights Act states that no one may be denied accommodation owned or controlled by the federal government because of his or her religious beliefs.
3. This is a federal matter, because airlines fall under the federal jurisdiction. No one may be refused employment because of race.
4. This is a federal matter because the Government of Canada is responsible for the Post Office. The Canadian Human Rights Act states that there can be no discrimination in employment on the ground of sex.
5. A person may not be denied membership in the union of a railway company because of his or her race or ancestry. Because this is a national union the person would file a complaint with the Canadian Human Rights Commission.
6. The Canadian Human Rights Act has specific provision for the physically handicapped where employment is involved, which the Ontario Code does not now have. Also the federal government has jurisdiction over the telephone companies.
7. It depends on the status of the employer. Dissimilar work having equal value is covered by the Canadian Human Rights Act. The Ontario Employment Standards Act guarantees equal pay for persons doing substantially the same work.
8. This notice is discriminatory, in that it defines an opportunity for employment by age. This is an offense, and a complaint should be lodged with the Canadian Human Rights Commission because, in this case, the company lies within the jurisdiction of the federal government. ■

Letters Invited

We welcome your reaction to *Affirmation*. Write us – we're looking for your participation.

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